

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DWIGHT DURAN, *et al.*,

Plaintiffs,

v.

1:77-cv-00721-KK-SCY

**MICHELLE LUJAN GRISHAM,
Governor, *et al.*,**

Defendants.

**UNOPPOSED MOTION TO SUPPLEMENT PLAINTIFFS' RESPONSE TO MOTION
FOR COMPLIANCE WITH PARAGRAPH 7**

Plaintiffs, through counsel, respectfully request the Court allow Plaintiffs to supplement its Response to Defendant's Motion for Finding of Substantial Compliance with Paragraph 7 of the Second Revised Settlement Agreement [Doc. 3328], pursuant to Fed. R. Civ. 15.

FACTS

1. Defendant filed its Motion for Finding of Substantial Compliance with Paragraph 7 of the Second Revised Settlement Agreement [Doc. 3327] on January 26, 2023.
Plaintiffs filed their Response [Doc. 3328] on February 9, 2023, and Defendant filed its Reply [Doc. 3332] with additional records not previously provided with its Motion on April 6, 2023.
2. Defendant filed a Notice of Completion of Briefing [Doc. 3333] on April 6, 2023.
3. Plaintiffs' subsequently obtained new reports and declarations from class members of continued violations of SRSA Paragraph 7. *See* Supplemental Declarations, attached as Exhibit 1.

4. Pursuant to the Monitoring and Access Agreement [Doc. 3178, ¶ 4] in this case, Plaintiffs' counsel toured the Western New Mexico Correctional Facility - North ("WNMCF-N") on April 17, 2023.
5. During the tour of WNMCF-N, counsel obtained three additional class member declarations, from Betty Albert, NMCD #46837, Santana Downey, NMCD #87787, and Annette Dominguez, NMCD #64029, alleging additional violations of Paragraph 7 of the Second Revised Settlement Agreement ("SRSA") [Doc. 3200-1].
6. The declarations allege that these class members reported non-working toilets at WNMCF-N between March 2023 and mid-April 2023 that the facility did not fix within 48 hours contrary to SRSA Paragraph 7. *See* Exhibit 1, pp. 1-3.
7. Plaintiffs' counsel was unaware of these allegations of non-compliance at WNMCF-N prior to the April 17, 2023 tour of that facility.
8. On May 22, 2023, Plaintiffs' counsel also received an additional class member declaration from Jerel Stevens, NMCD #82519, alleging that he was housed in a cell with a non-functioning toilet at the Central New Mexico Correctional Facility ("CNMCF") from May 2 to May 14, 2023, despite his repeated reports to staff that his toilet did not work and contrary to SRSA Paragraph 7. *See* Exhibit 1, pp. 4-6.
9. These declarations directly pertain to Defendant's request from this Court for a finding of substantial compliance with Paragraph 7 of the SRSA and should be considered by the Court in determining Defendant's substantial compliance with this provision.
10. Defendant consents to and does not oppose Plaintiffs' Motion to Supplement the record.

CONCLUSION

Wherefore, Plaintiffs request this Court allow them to supplement its Response with the four additional class member declarations addressed in this Motion and pertaining to Defendant's Motion for Substantial Compliance with Paragraph 7 as justice so requires.

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Certificate of Service

I HEREBY CERTIFY that on June 8, 2023, I caused the foregoing to be filed using CM/ECF which caused all counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Doreen McKnight
Alexandra Freedman Smith